

TAB H

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

	X	
CYCLE-CRAFT CO., INC.,	X	
d/b/a BOSTON	X	
HARLEY-DAVIDSON/BUELL,	X	
Plaintiff	X	
	X	CASE NO.
vs.	X	04 11402 NMG
	X	
HARLEY-DAVIDSON MOTOR	X	
COMPANY, INC., and BUELL	X	
DISTRIBUTION COMPANY, LLC,	X	
Defendants	X	

**VIDEOTAPED DEPOSITION of**  
**KENNETH MCPHEE**, taken pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Jill Kourafas, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts held at the Law Offices of Bingham McCutchen, 150 Federal Street, Boston, Massachusetts, on May 2, 2005, commencing at 9:17 a.m.

**REPORTERS, INC.**  
**GENERAL & TECHNICAL COURT REPORTING**  
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1 A. Yes.

2 Q. Do you know for how long they'd been used?

3 A. One of them I know was used throughout the  
4 year.

5 Q. Does Cycle-Craft still own these motorcycles  
6 today?

7 A. Yes, we do.

8 Q. They haven't been transferred to anybody?

9 A. No, not to my knowledge.

10 Q. Do you know whether they're registered with  
11 the DMV?

12 A. I believe -- I think one is still.

13 Q. What about the other two?

14 A. The other two, I believe, are in crates.

15 Q. And these three motorcycles were reported as  
16 having been sold at retail, SWR submissions  
17 by the dealership to Harley-Davidson; is  
18 that correct?

19 MR. REHNQUIST: Objection;  
20 foundation.

21 A. To my knowledge, yes.

22 Q. You say in your affidavit, Paragraph 14, the  
23 second-to-last sentence, "They were  
24 legitimate sales to Cycle-Craft"; do you see

1           that?

2           A.     No.

3           Q.     Were you present when anybody ordered a  
4           motorcycle pursuant to this expanded offer?

5           A.     No.

6           Q.     Did you ever see any paperwork about any  
7           orders of vehicles by employees pursuant to  
8           this expanded offer?

9           A.     No, I did not.

10          Q.     Just so that the record's clear, the  
11          reference to "expanded offer" refers to  
12          Mr. Buchbaum's offer about two weeks before  
13          the end of the model year that employees  
14          could buy motorcycles at dealer cost without  
15          any markup?

16          A.     That's correct.

17          Q.     The first sentence of Paragraph 20 says,  
18          "For a variety reasons none of these 13  
19          prospective employee relative buyers carried  
20          through with their purchases"; do you see  
21          that sentence?

22          A.     Yes, I do.

23          Q.     Do you have any personal knowledge about  
24          that?

1 A. No, just hearsay.

2 Q. well, hearsay from sources other than  
3 counsel?

4 A. Just employee talk.

5 Q. okay. well, what employees?

6 A. I don't know specific employees. I just  
7 heard people say they couldn't buy. I  
8 didn't know who exactly it was buying, but  
9 you heard talk of people that wanted to buy  
10 but couldn't.

11 Q. Can you put any names with those comments?

12 A. No.

13 Q. This statement says, though, you're  
14 attesting to this under oath that none of  
15 these 13 perspective employee relative  
16 buyers carried through with their purchase,  
17 what's the source of that statement?

18 A. After the fact, after reviewing the  
19 inspections of records letter and reviewing  
20 that, I see none of those 13 carried  
21 thorough with their purchases.

22 Q. so, it's your deduction that these 13 people  
23 didn't wind up with the bikes, and so,  
24 therefore, they didn't carry through with

1           their purchases?

2       A.     Correct.

3       Q.     Coming back to the last sentence of 19, your  
4           statement that "Employee relatives initially  
5           ordered motorcycles pursuant to this  
6           expanded offer," that was information that  
7           was given to you by counsel?

8       A.     Yes.

9       Q.     Do you have any understanding as to how  
10          counsel got that information?

11                   MR. REHNQUIST:  Objection.

12      A.     No, I do not.

13      Q.     But there's nothing at the dealership that  
14          you could find that shows that employees  
15          ordered motorcycles pursuant to this  
16          expanded offer as indicated in the last  
17          sentence of 19?

18                   MR. REHNQUIST:  Objection;  
19          foundation.

20      A.     No.

21      Q.     Second sentence of Paragraph 20 says, "Some  
22          simply changed their minds for personal  
23          reasons"; how do you know that?

24      A.     (Pause.)